

unnecessary for either this Commission or state commissions to approve negotiated arrangements that contain bill and keep. There is nothing in Sec. 252(e)(2), governing approval of negotiated agreements, that would otherwise impede approval of bill and keep arrangements.

2. The Commission's Rules Should Provide for Bill and Keep Between Incumbent LECs and New Entrants (NPRM ¶¶ 239-43)

Hyperion recommends that the Commission's rules adopt bill and keep in lieu of an actual exchange of compensation by carriers for terminating calls on each other's networks. Bill and keep avoids the problems of other compensation methods. From an administrative standpoint, bill and keep is extremely uncomplicated. Since carriers merely bill their customers and keep the revenues, there is no need to measure the costs of calls that arrive from another carrier's network. There is no need to maintain records of these calls and no occasion to experience the accounting nuisance associates with paying out or taking in compensation from multiple competitors in the market. However, if, in the future, there is reliable evidence that bill and keep is unreasonable or comparatively uneconomical, any party may petition for a change in their traffic exchange compensation methodology with other carriers. However, at this time, bill and keep is the most effective methodology to foster true local exchange competition for new entrants.

Unlike cost-based methods of mutual compensation, bill and keep does not require neutral and accurate cost studies to treat parties fairly. Cost-based methods depend on carriers assessing their transportation and termination costs. Customers' rates balloon upward as carriers spend valuable resources conducting expensive, time-consuming cost studies. Incumbent LECs have unlimited opportunities to manipulate cost data, necessitating the intervention of either federal or

state regulatory authorities in the role of a watch-dog.¹⁹ Hyperion opposes the use of any cost study performed before the passage of the Act, especially those that were designed for rate-of-return regulation.

Under the Act, neither this Commission nor state commissions are empowered to order, or supervise, cost studies. Section 252(d)(2)(B)(i) provides that both federal and state regulators are not authorized to engage in "rate regulation proceedings to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to additional costs of such calls." It appears that the Commission, and its state counterparts, are enjoined from conducting proceedings that would determine "with particularity" carriers' costs of terminating traffic. Moreover the Act prevents oversight of carriers' record-keeping systems, introducing the possibility of anticompetitive manipulation by incumbent LECs. Bill and keep dovetails nicely with Sec. 252(d)(2)(B)(i) by alleviating the need for studies of termination costs.

Given the existence of Sec. 252(d)(2)(B)(i), Hyperion doubts whether the Commission could implement its proposal to restrict bill and keep to situation where transport and termination costs of carriers are roughly equal and traffic is close to being in balance or where actual transport and termination costs are quite low. Para. 243. It seems unlikely that the Commission has the right to measure the costs of transportation and termination, and no carrier would support the Commission merely guessing as to when these costs are equal or very low. At best, the Commission can tie appropriate circumstances for bill and keep to traffic being in balance. But, with very little information regarding traffic balances between carriers currently available, the Commission ought

¹⁹ Bill and keep also forecloses disputes over the application of cost methodologies that may vary from jurisdiction to jurisdiction.

to withhold negative judgments of bill and keep. As the Commission notes in Para. 240 of the NPRM, several state commissions have already selected mutual traffic exchange, or bill and keep, as an interim method of resolving terminating compensation.²⁰ Hyperion urges the Commission also to give bill and keep a chance, before resorting to complex, and necessarily, imprecise cost-based methods of reciprocal compensation.

²⁰ *Re City Signal, Inc.*, 159 P.U.R.4th 532, 547-48 (Mich. P.S.C., February 23, 1995) (ordering that bill and keep will be used when the balance of traffic in either direction is within 5%); *In re: McLeod Telemanagement, Inc.*, 160 P.U.R.4th 473, 480-81 (Iowa Utilities Board, March 31, 1995) (ordering the use of bill and keep on an interim basis, pending the filing of adequate cost studies); *Washington Utilities and Transportation Commission v. US West Communications, Inc.*, Docket Nos. UT-941464, *et al.*, at 29-31. (Washington Utilities and Transportation Commission, October 31, 1995) (ordering the use of bill and keep on an interim basis, pending the filing of adequate cost studies); *Regulations for Local Telecommunications Providers*, Rule 1220-4-8-.10(3)(a) (Tennessee Division of Public Utilities, December 21, 1995) (adopting bill and keep for one year); *In the Matter of the Application of Electric Lightwave, Inc. for a Certificate of Authority to Provide Telecommunications Services in Oregon*, Order No. 96-021 (Or. P.U.C., January 12, 1996) (ordering bill and keep for 24 months); *Re Competition for Local Exchange Service*, 163 P.U.R.4th 155, 174-175 (Cal. P.U.C., July 24, 1995) (adopting bill and keep for one year).

VII. CONCLUSION

For the foregoing reasons, Hyperion requests that the Commission adopt rules establishing the requested national, minimum standards governing interconnection, unbundled network access, virtual collocation, and pricing of unbundled network elements and collocation (at incremental cost, with no allocation for contribution) and of mutual traffic exchange (bill and keep arrangement). Setting these requested minimum standards will hasten and encourage the onset of nationwide local competition provided by facilities-based new entrants such as Hyperion and avoid the skewed development of competition on a state-by-state basis.

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